Barry R. Lax, Esq. (BL 1302)
1450 Broadway, 35th Floor
New York, New York 10018
Tel: (212) 696 – 1999

*Attorneys for Dr. Kerr*
*Dr. Eubulus J. Kerr, III*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| Dr. Eubulus J. Kerr III, Plaintiff, | Index No. 1:14-cv-09168 |
| -against- | **COMPLAINT** |
| Tabitha Belesis, TOMTAB, LLC, CKR Law LLP, Titan Capital ID, LLC, and Titan Servicing, LLC, Defendants. | |

Pursuant to the Court's direction in related matter Kerr v. John Thomas Financial, et al. (1:14-cv-09168), Plaintiff Dr. Eubulus J. Kerr, III ("Dr. Kerr"), by and through his undersigned counsel, for his complaint states as follows:

## JURISDICTION

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, in that the action involves a dispute between citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs.

2. This Court has jurisdiction over this action pursuant to enforce its own judgments.

3. Furthermore, this Court has jurisdiction to apply Article 52 of New York's Civil Practice Law and Rules pursuant to Rule 69 of the Federal Rules of Civil Procedure.

4. Venue is proper pursuant to 28 U.S.C. § 1391, because a substantial part of the

events or omissions giving rise to Dr. Kerr's claims occurred in this District, and a substantial part of property that is the subject of the action is situated in this District.

## PARTIES

5. Dr. Eubulus J. Kerr is a resident of the State of Louisiana.

6. Tabitha Belesis resides at 60 Beach Street, Apt. 1-A, New York, New York 10013. She is the purported manager and sole owner of TOMTAB LLC and has been married to Anastasios Belesis since 2004.

7. TOMTAB LLC is a Delaware limited liability company with its principal place of business at 60 Beach Street, Apt. 1-A, New York, New York 10013.

8. CKR Law LLP is a California limited liability company with an office at 1330 Avenue of the Americas, 14th Floor, New York, New York 10019. CKR Law has represented Tabitha Belesis, TOMTAB LLC, and Anastasios Belesis, as well as other companies in which Anastasios Belesis has an interest.

9. Titan Capital ID, LLC is a Delaware limited liability company and private lender with its principal place of business at 19 Ludlow Road, Suite 301, Westport, CT 06880.

10. Titan Servicing, LLC is a Delaware limited liability company and subsidiary of Titan Capital ID, LLC with its principal place of business at 19 Ludlow Road, Suite 301, Westport, CT 06880.

## CLAIMS

11. In April 2011, Dr. Kerr invested $733,000 with John Thomas Financial ("John Thomas"). John Thomas and Anastasios Belesis, John Thomas' Chief Executive Officer, began

churning Dr. Kerr's account the same month, at which point Dr. Kerr's claim of fraud against the defendants in the related action began to accrue and he became a creditor to Anastasios Belesis.

12. On September 13, 2011, Anastasios Belesis and his wife, Tabitha Belesis formed TOMTAB, LLC ("TomTab"). In October 2011, Anastasios Belesis purportedly transferred his interest in TomTab to Tabitha Belesis for no consideration.

13. In April 2012, in anticipation of an SEC investigation and litigation, Anastasios Belesis purportedly transferred his interest in the condominium unit found at 60 Beach Street, Apt. 1-A, New York, NY 10013 (the "60 Beach Street") to TomTab for no consideration and in an attempt to hinder the collection of any judgment against him.

14. In a further attempt to hinder the collection of any judgment against him, Anastasios Belesis, as he testified in his December 11, 2015 deposition, transferred all his other assets to his wife, without consideration, in 2012 and 2013. Anastasios Belesis further testified that the transfers left him without any assets, thus rendering him insolvent.

15. Under the New York Creditor and Debtor Law ("NYCDL"), the transfers to TomTab and Tabitha Belesis were fraudulent as to Dr. Kerr, whose claim arose in April 2011.

16. On January 3, 2013, Dr. Kerr brought an action for securities fraud, common law fraud, negligence, gross negligence, and failure to supervise against, among others, John Thomas and Anastasios Belesis. The dispute was arbitrated before the Financial Industry Regulatory Authority ("FINRA") between June 16 and 18, 2014.[1] On August 5, 2014, the FINRA Panel found Anastasios Belesis liable for fraud, among other things, and awarded Dr. Kerr compensatory and punitive damages plus interest, costs, and fees. This Court confirmed the Award on July 16, 2015.

---

[1] The proceeding was captioned: Eubulus J. Kerr, III vs. John Thomas Financial, *et al*, FINRA No. 13-00041.

17. The Court entered Judgment on July 22, 2015 and amended the judgment on July 7, 2016 to reflect a sum certain of $1,017,140.75.

18. In May 2016, TomTab obtained a mortgage on 60 Beach Street from Titan Capital ID, LLC ("Titan Capital"), for which Anastasios Belesis signed as a guarantor, in part based on a financial statement claiming $144,148,400 in assets. CKR Law, which also represented Tabitha Belesis and TomTab in the 60 Beach Street transaction, issued an opinion of counsel that there were "no actions, suits or proceedings…pending against or affecting" Anastasios Belesis. In his Guaranty, Anastasios Belesis acknowledged that he "will receive a direct, material and substantial benefit from" the funds loaned by Titan Capital.

19. Titan Capital was, in fact, aware of several securities fraud cases against Anastasios Belesis that had been rendered to judgment, including the one brought by Dr. Kerr. Nonetheless, Titan Capital agreed to lend money to Anastasios and Tabitha Belesis.

20. Upon disbursement of the mortgage proceeds, Anastasios Belesis satisfied the previous mortgage on 60 Beach Street and paid a variety of legal fees and a judgment that had been issued against him. As of May 19, 2016, the date of disbursement, Titan Servicing LLC ("Titan Servicing"), a subsidiary of Titan Capital, received $14,805.56 as short interest and held $410,000 for the benefit of TomTab as a six month interest reserve. Titan Capital also received $97,500 in fees on the transaction.

21. As of May 19, 2016, CKR Law received $370,000 as fees and held an additional $477,258.80 in net proceeds for TomTab. CKR Law, in correspondence with Dr. Kerr's counsel, indicated that it both represented "Anastasios Belesis, individually, and certain affiliated businesses which he owns or controls" and acted as his escrow agent.

22. The conveyance of 60 Beach Street, and any other property by Mr. Belesis since 2011, is fraudulent as to Dr. Kerr, as are any proceeds from the mortgage encumbering 60 Beach Street, and Dr. Kerr is entitled to set aside or ignore the conveyances and recover from the assets in the amount of the Judgment, with interest and attorneys' fees.

23. On October 17, 2016, after a hearing in the related matter, this Court issued a Temporary Restraining Order against Titan Servicing, TomTab, Tabitha Belesis, and CKR Law, and scheduled an evidentiary hearing for October 28, 2016.

24. To date, despite the execution of a release agreement which Anastasios Belesis later breached and months of post-judgment proceedings, Dr. Kerr has not been paid pursuant to the Award or Judgment.

25. Mr. Belesis made each of the conveyances identified herein to CKR Law, Titan, Tabitha Belesis, and TomTab in order to delay and frustrate a judgment entered by this Court more than a year ago.

**WHEREFORE**, Plaintiff Dr. Kerr respectfully requests an order and judgment as follows:

i. Pursuant to NYCDL §§ 272 *et seq.*, directing that the conveyances made to TomTab and Tabitha Belesis be set aside as fraudulent and assets preserved and turned over in the amount necessary to satisfy Dr. Kerr's claim;

ii. Declaratory relief as to the priority of Dr. Kerr's judgment against 60 Beach Street over that of Titan Capital as mortgagee;

iii. Pursuant to NYCDL § 278 and CPLR Article 52, directing that the proceeds of the mortgage on 60 Beach Street now or at any time in the possession of Titan

Servicing, including but not limited to the interest reserve in the amount of $410,000, be preserved and turned over in the amount necessary to satisfy Dr. Kerr's claim;

iv. Pursuant to NYCDL § 278 and CPLR Article 52, directing that the proceeds of the mortgage on 60 Beach Street now or at any time in the possession of CKR Law, including but not limited to amounts held in escrow or retainer and amounts paid over as fees for legal services, and that any other amounts held by CKR Law on behalf of Anastasios Belesis or any entity under his control, Tabitha Belesis, or TomTab, or paid over or transferred to CKR Law as fees or for any other purpose, be preserved and turned over in the amount necessary to satisfy Dr. Kerr's claim;

v. Pursuant to NYCDL §§ 272 *et seq.*, directing that all assets conveyed to TomTab after April 2011 be preserved and turned over in the amount necessary to satisfy Dr. Kerr's claim;

vi. Pursuant to NYCDL §§ 272 *et seq.*, directing that all assets conveyed to Tabith Belesis after April 2011 be preserved and turned over in the amount necessary to satisfy Dr. Kerr's claim;

vii. Directing that the property at 60 Beach Street be turned over for sale forthwith and that all such proceeds necessary to satisfy the Judgment, with additional interest and all attorneys' fees, be paid over first to Dr. Kerr;

viii. Pursuant to NYCDL § 276, reasonable attorneys' fees in this action, as well as in the related case, assessed against CKR Law, Tabitha Belesis and TomTab; and

ix. Such other relief as the Court deems just and proper.

Dated: New York, New York
October 17, 2016

By: ***/s/* Barry R. Lax**

Barry R. Lax, Esq. (BL 1302)
Robert R. Miller
Mary Grace White
Lax & Neville LLP
1450 Broadway, 35th Floor
New York, NY 10018
Tel: (212) 696-1999

*Attorneys for Plaintiff*
*Dr. Eubulus J. Kerr, III*